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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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THE PEOPLE,

Plaintiff and Respondent,

v.

LAWRENCE ALLEN MERIWETHER,

Defendant and Appellant.

C061464

(Super. Ct. No.  
62-84871)

A jury convicted defendant Lawrence Allen Meriwether of unlawfully taking or driving a vehicle (count one; Veh. Code, § 10851, subd. (a)); purchasing or receiving a stolen vehicle (count two; Pen. Code, § 496d [further undesignated section references are to the Penal Code]); misdemeanor possession of drug paraphernalia (count four; Health & Saf. Code, § 11364); and misdemeanor driving on a suspended or revoked license (count five; Veh. Code, § 14601.1, subd. (a)).<sup>1</sup> In a bifurcated proceeding, defendant admitted a prior prison term based on

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<sup>1</sup> The People apparently dismissed count three (misdemeanor possession of marijuana) before trial.

convictions for possession of methamphetamine for sale and transportation of methamphetamine (§ 667.5; Health & Saf. Code, §§ 11378, 11379).

After finding (contrary to the probation department's recommendation) that defendant was ineligible for probation because there were no unusual circumstances, the trial court sentenced him to two years in state prison (the midterm on count one, with sentence on count two stayed (§ 654), concurrent sentences on counts four and five, and the prior prison term allegation dismissed). The court awarded defendant 187 days of presentence credit (125 actual days plus 62 days of conduct credit).

Defendant contends the trial court erred by allowing the prosecution to impeach him with his prior felonies and by denying probation. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

On October 17, 2008, at approximately 5:00 p.m., Lincoln Police Officer Michael Gandy observed a Black male (defendant) sitting in a 1979 Chevrolet Blazer in a store parking lot, with a White male leaning in the passenger side window; the men appeared to be exchanging something. Checking the license plate number, Officer Gandy learned that the Blazer was reported stolen from Citrus Heights on September 10, 2008.

As he approached with gun drawn, Officer Gandy noticed that the Blazer was running, though the steering column was damaged and there was no key in the ignition. Officer Gandy ordered

defendant out and detained him in the backseat of the officer's patrol car.

Officer Gandy found a bent General Motors key in one of defendant's pockets. Inside the Blazer, Officer Gandy found three digital scales with white powder residue, along with a glass pipe and four glass cylinders, usable for smoking methamphetamine.

Defendant said he had purchased the Blazer in Citrus Heights three months ago from "Tony," whom he could not identify further.

Leo Valdez testified that he purchased the Blazer from Shane Anderson in February 2008, but never received written title. On or about August 18, 2008 (or possibly August 20 or 21), Valdez parked the Blazer in front of his residence, intending to sell it to a wrecking yard for parts, but the vehicle disappeared.<sup>2</sup> He had not given anyone permission to take or drive it other than the tow truck driver from the wrecking yard.

Anderson, who remained the Blazer's recorded owner, never gave anyone but Valdez permission to take or drive it. Anderson learned of the theft 10 to 15 days after it had happened, from a third person who knew him and Valdez. Anderson and Valdez

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<sup>2</sup> After giving this time frame, he added: "I'm not sure. It could have been July. June, July, August. Could have been July also." He was sure, however, that whatever date it was, he had reported the theft to the police immediately after it happened.

reported the theft to the Citrus Heights Police Department on September 10, 2008.<sup>3</sup>

Defendant, testifying on his own behalf, claimed he purchased the Blazer in early August 2008 from Scott Anthony Meyers, a parolee who used to go by "Tony" but now goes by "Scotty," after meeting him at the home of Danny Chavez in defendant's apartment complex.<sup>4</sup> Because defendant did not have the full asking price, he offered to throw in a radio-controlled car he owned. However, Meyers did not have the pink slip with him; therefore defendant said he would keep the motor of his radio-controlled car until Meyers furnished the pink slip. Meyers never did so, despite two or three later calls from defendant. Meyers also never told defendant the Blazer was stolen.

According to defendant, Meyers gave him the ignition key, which he had in his pocket on the night of his arrest. But two days before his arrest the ignition mechanism broke and he had to dismantle the steering column to start the Blazer, after which he could not use the key.

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<sup>3</sup> The police department employee who took Anderson's report was not aware of any earlier report from Valdez or anyone else.

<sup>4</sup> On rebuttal, Officer Gandy testified that he could not locate a Scott Anthony Meyers in a parolee database, although he did locate a Christopher Scott Meyers there. (The name of the purported seller defendant gave when arrested -- "Tony" -- could logically derive from the name defendant gave at trial, but not from the name Officer Gandy found in the database. Defendant did not tell the officer that "Tony" was also called "Scotty.")

Defendant admitted that, even though he had supposedly contacted Meyers several times about the Blazer's title, he told Officer Gandy he did not know how to reach Meyers. According to defendant, he did this because he was exercising his right to remain silent, as the officer had advised him.

Defendant admitted he was convicted of possessing methamphetamine for sale in 1999 and of transporting methamphetamine in 2000.

Defendant presented witnesses to corroborate his claims that he purchased the Blazer from Meyers by mid-August 2008, including Danny Chavez, Kris Smith (another friend of defendant), and defendant's girlfriend, Marla Brennan. Chavez admitted several felony convictions.

#### DISCUSSION

##### I

Defendant contends the trial court abused its discretion by admitting his prior convictions for impeachment. We disagree.

Defendant moved in limine to exclude the priors for impeachment. In argument, defendant asserted only that they were too remote because they were almost 10 years old. The trial court rejected this argument. The court also noted that defendant was going to testify in any event and that the priors related only in a "tangential" way to one count (possession of paraphernalia). Finding the priors admissible for impeachment under *People v. Beagle* (1972) 6 Cal.3d 441 and Evidence Code section 352, the court allowed them into evidence for that purpose. (See also *People v. Castro* (1985) 38 Cal.3d 301, 314.)

We review the trial court's evidentiary rulings for abuse of discretion, and will not disturb the court's exercise of discretion except on a showing that it was arbitrary, capricious, or patently absurd, resulting in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) Defendant cannot make that showing.

To begin with, because defendant argued against the admission of the priors below only on the ground of remoteness, any other objection is forfeited. (Evid. Code, § 353, subd. (a); *People v. Geier* (2007) 41 Cal.4th 555, 609-610.) In any event, none of defendant's arguments have merit.

Prior convictions less than 10 years old are not too remote for impeachment. (*People v. Morris* (1991) 53 Cal.3d 152, 194-195; *People v. Campbell* (1994) 23 Cal.App.4th 1488, 1496-1497.) Furthermore, since defendant's most recent felony conviction, he had been convicted of possessing stolen property in 2002 and possessing a controlled substance in 2004, and had also incurred a parole violation in 2004. His failure to lead a legally blameless life strengthened the case for admitting the priors. (See *People v. Mendoza* (2000) 78 Cal.App.4th 918, 925.)

Defendant asserts that he suffered prejudice because the trial court did not sanitize sua sponte his priors to keep the jury from learning that they involved drug offenses. He reasons here, but did not in the trial court, as follows: Not only was he accused of possessing drug paraphernalia, but his arrest appeared to have interrupted a drug transaction, though no such offense was charged. The jury, knowing he had been convicted of

possession of drugs for sale but was not charged with that offense now, would have been more strongly motivated to convict him of what he was charged with, since he could not be punished for the uncharged conduct he appeared to have committed. Finally, the prosecution's case on counts one and two was weak because it pitted the "confused" testimony of Leo Valdez against defendant's credible and corroborated story of how he acquired the Blazer. We are not persuaded.

First, defendant cites no authority requiring or even recommending that prior convictions be sanitized, especially by a court on its own motion. We need not consider legal propositions asserted without authority. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.)

Second, defendant's assertion that learning of his prior convictions could have moved the jury improperly to punish him for an uncharged drug offense, rather than for the charged offenses shown by the evidence, is sheer speculation which baselessly attacks the jurors' integrity. We presume that jurors follow the law as it is given to them and reach their verdicts accordingly. (Cf. *People v. Adcox* (1988) 47 Cal.3d 207, 253.) Defendant cites nothing in the record to disturb this presumption.

Third, defendant claims that had the jury not known the nature of his prior convictions, it would have believed him rather than the prosecution witnesses. This claim disregards the substantial evidence standard of review and is frivolous. Whatever the weaknesses in Valdez's testimony may have been, it

was corroborated by the testimony of Shane Anderson and the police witnesses that the Blazer was reported stolen before Officer Gandy found defendant in possession of it. Whether it was Valdez or Anderson who had title to the Blazer, neither had given defendant permission to take it. No disinterested witness testified that "Tony" or "Scotty" Meyers, from whom defendant claimed to have bought the Blazer, even existed -- let alone that, if he did, he had a legal right to possess or transfer the vehicle. (Even according to defendant, he never obtained any proof that Meyers had title.) No witness other than defendant and his friends placed him in possession of the Blazer before it was reported stolen. Defendant's explanation of how he came to be driving it with a damaged steering column and no key in the ignition was ludicrous. Worst of all, defendant asked the jury to believe he told Officer Gandy he got the Blazer from someone called "Tony" whom he could not identify further or provide any contact information for, rather than giving the officer the full account defendant offered at trial, merely because the officer *Mirandized* him. No rational jury could have believed that, even if defendant had not been impeached with his prior crimes of moral turpitude.

Lastly, defendant asserts the trial court's statement that prior convictions should come in "unless the facts are pretty extreme" shows the court misunderstood the scope of its discretion under Evidence Code section 352. We need not decide this point because we review the trial court's ruling, not its reasoning. (*California Aviation, Inc. v. Leeds* (1991) 233

Cal.App.3d 724, 731.) For the reasons already given, the court's ruling was correct.

## II

Defendant contends the trial court erred by finding he could not receive probation. We disagree. The court did not abuse its discretion by ruling that no unusual circumstances existed which could overcome defendant's statutory ineligibility for probation. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831 [abuse of discretion standard of review of decision whether unusual circumstances exist].)

### Background

#### *The probation report*

The probation report observed correctly that defendant's two prior felonies made him statutorily ineligible for probation, barring unusual circumstances. (§ 1203, subd. (e)(4); Cal. Rules of Court, rule 4.413(c) [further references to "rules" are to the Cal. Rules of Court].) However, the report stated: "[T]he defendant has no recent record of similar crimes nor is there a history of serious and/or violent crimes, with his last felony conviction in 2000."

Under "criteria affecting probation" (rule 4.414), the report favorably stated: (1) the nature of his offense was no more serious than other instances of the same crime; (2) the victim's monetary loss "appears minimal, less than \$1,000"; (3) defendant did not demonstrate criminal sophistication or professionalism in committing the offense; (4) he was willing to comply with terms and conditions of probation; (5) his ability

to do so is "fair" because he has community ties and employment skills (though "his substance abuse seems to be an obstacle to his success"); (6) imprisonment could prove a financial hardship to his minor children (though he does not have physical custody); (7) "[a]dverse collateral consequences on the defendant's life resulting from a felony conviction may impact his future probation eligibility"; and (8) if not imprisoned, he did not appear to be a danger to others.

The report unfavorably stated: (1) defendant was an active participant in and solely responsible for his behavior in the offense; (2) his adult criminal history spans 10 years and consists of two felony and two misdemeanor offenses, three of which are drug-related; (3) his parole performance was unsatisfactory due to new law violations; and (4) he was "minimally remorseful."

Under rule 4.421, the report found three circumstances in aggravation (prior record of adult convictions becoming numerous; prior prison term; unsatisfactory performance on parole) and none in mitigation.

In summation, the report stated: "With the two prior felony convictions, [defendant] is conditionally ineligible for probation. [¶] Since the defendant has no history of serious or violent crimes and no recent record of similar crimes, unusual circumstances are found to exist and probation is recommended. A term of four years is suggested with relevant terms and conditions along with a significant disciplinary term."

*The sentencing hearing*

After the parties had argued the issue, the trial court stated: "Okay. My job here . . . is not to nitpick the [L]egislature. We're all aware of the constitutional limitations, but they are narrower than what most people, perhaps most lawyers even think. My job is to effectuate what the [L]egislature tells me to do if they speak. And they have spoken in a case like this. They said unusual circumstances." The court then noted: "[I]f the the district attorney were to agree to a dispo, we can obviate any discussion of unusual facts." The prosecutor stated that his previous offer of the midterm was still on the table. The court asked counsel to "think about that[.]" It then spelled out its views on probation.

The court said it was not persuaded by the probation report: "I give it great weight, but it's not conclusive. And I simply don't agree that probation laid it out correctly in this case. In fact, . . . it's not a very good job on the part of probation of justifying their recommendation."

The court also specifically found: (1) defendant's testimony was unbelievable; (2) the victim's loss was not minimal; (3) defendant's prior felonies included a conviction for possession of drugs for sale, which is a major offense; (4) he had not been crime-free since his last felony conviction; and (5) there was nothing that made this an unusual case as the Legislature and the courts had defined that term.

On the last point, the court said: "[T]he way I look at it, the [L]egislature has hemmed me in on this one. And I'm one of these Courts that believes in obeying what the [L]egislature tells me. And I just don't see him falling into the scheme where the [L]egislature has, based on what they've said, what the appellate courts have said, how he falls into an unusual case." (Italics added.)

Then, the court said: "[Y]ou've heard the offer from the DA. You now know where I'm coming from; that I have to follow the [L]egislature's directions, including if I do deny probation, you know, doing the weighing process of mitigation versus aggravation. [¶] Now, given that, I am going to recess for about five minutes, and I want you to talk to one another, perhaps out of the presence of the defendant, and then see if we can reach a resolution."

After the parties went back on the record, counsel said they had agreed to the two-year "stipulated" midterm. The court proceeded to impose that sentence, as described more fully above.

#### Analysis

Defendant cites the following comments by the trial court during the sentencing hearing as proof that it abused its discretion: (1) The court stated that defendant's prior offense of possessing a controlled substance for sale was not only a major felony, but one which "destroys more lives than anything else in the criminal law, . . . it's up there with any heart disease, cancer. It's right up there with those things.

Certainly more than war.” (2) The court stated that a defendant’s record since his last felony counted in his favor only if he had remained crime-free “for decades.” (3) The court stated that defendant’s “[c]urrent offense . . . is not lesser.”<sup>5</sup> According to defendant, these comments taken together show that the court set the standard for finding unusual circumstances so high that it “exceed[ed] the bounds of reason,” and its ruling was “both arbitrary and capricious.” We are not persuaded.

The court’s florid rhetoric aside, its finding that no unusual circumstances within the meaning of rule 4.413(c) existed was well within its discretion. (Cf. *California Aviation, Inc. v. Leeds*, *supra*, 233 Cal.App.3d at p. 731.) The offense of possessing a controlled substance for purposes of sale is a major felony. Defendant had not remained crime-free since his release from prison, but had offended repeatedly and violated parole. Defendant persisted in claiming, despite the jury’s verdict, that he had not stolen the Blazer or possessed it knowing to be stolen. (Contrary to the probation report, the fact that it was worth less than \$1,000 did not make the victim’s loss trivial or insignificant as a matter of fact or law.) And the likelihood of defendant complying with probation was low, given his criminal history and his drug habit (as the probation report partly acknowledged). Thus, the court could

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<sup>5</sup> The court did not say what defendant’s current offense was “not lesser” than, and it is not easy from the context to determine what the court might have meant.

reasonably find that nothing the probation report called "unusual circumstances" was unusual enough to bring this case within rule 4.413(c).

Defendant asserts that the court admitted it would have granted probation if the Legislature had not "hemmed me in on this one." However, though the court did say that based on the probation department's recommendation, "if I was operating in a vacuum, I would probably very reluctantly grant him probation," it went on to explain that the Legislature had "hemmed [it] in" by requiring a finding of unusual circumstances to grant probation to a twice-convicted felon, and courts must follow the Legislature's policy decision. In other words, the court correctly stated the law and exercised its discretion appropriately.

Defendant has shown no abuse of discretion in the trial court's denial of probation.

### III

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue (without additional briefing) of whether amendments to section 4019, effective January 25, 2010, apply retroactively to his pending appeal and entitled him to additional presentence credits. We conclude that they do not because he was previously convicted of a serious felony. (§ 4019, subds. (b)(2), (c)(2); Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 50.)

DISPOSITION

The judgment is affirmed.

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NICHOLSON, J.

We concur:

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BLEASE, Acting P. J.

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RAYE, J.